IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 6585 OF 2002

Shri. B. V. Patil.

..Petitioner.

Vs.

Mah. State Road Transport Corporation and ors.

..Respondents.

Mr. N.V. Bandivadekar for Petitioner.

Mr.G.S.Hegade for Respondent No.1.

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CORAM :B.H. MARLAPALLE,J.
DATED : 11TH APRIL,2005.

P.C.:

1. Heard Mr. Bandivadekar, the learned counsel for the petitioner who was employed as driver with the respondent-Corporation. On 24.5.1995, he was on duty on Bus No.MH-12-F-8465 plying on Manpadale Vadgaon road. The said bus gave dash to the car coming from the opposite direction and caused accident. In all 7-passengers in the car died on the spot and 18-passengers in the car and the bus were seriously injured. After conducting preliminary enquiry, a charge-sheet was issued

against the petitioner and in the enquiry conducted he was found to be guilty of the charges under Clause 11,12 and 39 and Schedule A to the Discipline and Appeal Procedure as conducted by the respondent-Corporation. He was awarded punishment of dismissal vide order dated 18.3.1995 and therefore, he approached the Labour Court at Kolhapur and challenged the order of dismissal in Complaint (ULP) No.59/1995.

2. After hearing both the sides and taking into consideration the evidence placed before it, the Labour Court allowed the complaint partly and directed reinstatement of the complainant in regular employment of the Corporation, but as a fresh recruit. The benefit of continuity of service as well as back wages was denied to the petitioner as per the order dated 30.12.1996. This order was challenged in Revision Application (ULP) Nos.19/1997 and 70/1997. The first petition was filed by the Respondent-Corporation whereas the second petition was filed by the present petitioner. The Industrial Court was pleased to allow the employer’s revision and dismissed the revision filed by the employee vide its Judgment and order dated 24.7.1997 Hence, this petition by the employee.

3. There is no dispute that the Labour court held that enquiry against the petitioner was conducted in a fair and proper manner and it did not suffer from any illegalities. The Labour Court further observed that though the charge of rash driving was not proved, the act of negligent driving was duly proved and this negligent driving was because of the said accident. However, the Labour Court proceeded to observe that the punishment of dismissal from the service was harsh and severe and the same is shockingly disproportionate. The Labour Court noted that since 18.3.1995, the complainant was out of service and loss of salary as well as refusing retirement benefits was a sufficient punishment and therefore, the Labour Court directed the Corporation to reinstate the driver as a fresh recruit in regular post. The benefit of back wages and continuity of service has been denied. The Industrial Court held that the Labour court has committed an error apparent on the face of the record while holding that the Corporation has committed an act of unfair labour practice by inflicting punishment of dismissal from service. As per the Industrial Court, once the charge of

negligent driving was proved, by taking into consideration the nature of the accident and the number of causalities, there was no scope for the Labour Court to interfere with the punishment awarded which was strictly a managerial function of the respondent-Corporation. The view taken by the Labour Court was set aside.

4. The reasoning given by the Industrial Court in holding that the Labour Court has committed an error apparent on the face of the record by directing reinstatement as a fresh recruit cannot be faulted with. The Tribunals/Courts appointed under special statutes may examine the pleas of the respective parties. But once charge was duly proved, it is not open to the court of the first instance to substitute the punishment of dismissal solely on the ground that the employee was unemployed for more than two years and that would be a sufficient punishment. Awarding punishment is a managerial function and unless punishment awarded was either by way of victimization or on account of trade union activities or it was a case of disproportionate punishment, the Labour Court is not entitled to upset the punishment inflicted by the employer. It is the case of the Corporation that before the

petitioner approached to the Labour Court, it was necessary for him to prefer an appeal against the order of dismissal and there is a provision of second appeal. It was not permissible to the Labour Court to take the view that the punishment awarded was grossly disproportionate. The analysis of the evidence as undertaken by the Industrial Court and the reasons given in support causing interference in the order of the Labour Court cannot be termed as perverse or manifestly wrong. Hence, no case is made out to interfere with the impugned order under Article 227 of the Constitution of India.

5. Petition is therefore, rejected summarily.

(B.H.MARLAPALLE, J)